



**STATE OF NEW JERSEY**

In the Matter of Patrick M. Hebert,  
Construction and Maintenance  
Technician 1 (PS2532T), Department  
of Transportation

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

CSC Docket No. 2021-1195

Examination Appeal

**ISSUED: JUNE 7, 2021 (RAM)**

Patrick M. Hebert appeals the determination of the Division of Agency Services (Agency Services) that he did not meet the experience requirements for the promotional examination for Construction and Maintenance Technician (CMT) 1 (now CMT 4, 10133) (PS2532T), Department of Transportation (DOT).<sup>1</sup>

By way of background, the announcement for the subject examination was issued on February 1, 2020 and was open to employees in the competitive division who were then currently serving as a CMT 2 (10131), now CMT 3, and had an aggregate of one year of continuous permanent service as of the February 21, 2020 closing date and met the specified education and experience requirements below *or* to employees in the competitive division who had an aggregate of one year of continuous permanent service as of the closing date in any competitive title with three years of experience in inspecting or testing materials, reviewing permit applications, inspecting construction work, and/or construction maintenance work requiring mathematical calculations to estimate materials or labor needed or used, one year of which shall have been in a supervisory capacity. Additionally, successful completion of 90 college semester hour credits in engineering or in an engineering technology program was required. Applicants who did not possess the required experience could substitute additional college credits in engineering or in an engineering technology program on a year for year basis with 30 semester hour

<sup>1</sup> It is noted that in *In the Matter of Construction and Maintenance Technician Apprentice* (CSC, decided February 26, 2020), the Civil Service Commission granted Agency Services request to establish a two-year CMT Apprentice title and its allocation to the non-competitive division of the career service. It indicated that, per DOT's request, Agency Services would also be renumbering the title series with the CMT 1 (10128) title being at the lowest level and the CMT 4 (10133) title being at the highest level in the title series. The title series was renumbered effective February 29, 2020.

credits being equal to one year of experience. Applicants who did not possess the required education could substitute additional experience on a year for year basis as indicated above. It is noted that eight applicants were admitted to the subject examination, which has not yet been administered.

On his application, the appellant indicated that he served with DOT as a CMT 2 from May 2019 to the closing date of the subject examination (February 2020);<sup>2</sup> an Engineering Technician 3 from September 2013 to May 2019; a CMT 5 from June 2008 to September 2013 and a Maintenance Worker 1 from July 2004 to June 2008. The appellant also listed work experience as a Manager from June 1998 to February 2019 with Hebert Tree Farm; a Contractor Assistant/Maintenance Supervisor from January 1999 to October 2003 with Bluestone Farms; and lastly, a Construction Assistant/Laborer from August 1997 to August 1999 with Mercer County Equestrian Center. Per the substitution clause for education, Agency Services credited the appellant with a sufficient amount of the applicable general experience. However, it determined that the appellant lacked two months of supervisory experience.

It is noted that agency records indicate that five provisional employees are currently serving in the CMT 4 (10133) title, formerly CMT 1. Two of the five candidates who filed for the examination were appointed provisionally pending promotional examination procedures to the subject title effective November 9, 2019 and November 23, 2019. The appellant and one other employee, who also filed for the examination, were appointed provisionally effective February 13, 2021. The remaining employee who did not file for the subject examination was appointed provisionally effective February 27, 2021.<sup>3</sup>

On appeal to the Civil Service Commission (Commission), the appellant states that he has been employed with DOT for nearly 17 years and that he has been performing more than 75 percent of the duties listed on the job specification for the CMT 4 title prior to his provisional appointment. In support of his appeal, the appellant submits a copy of his Performance Assessment Review (PAR). He further states that, over 13 of those years, he was responsible for the supervision of consultant inspectors on all DOT time and material contracts assigned to him. Lastly, he states that, within the last two years, he has been responsible for approving timesheets, leave requests and conducting PAR reviews of staff members under his supervision. The appellant contends that his overall experience with the agency justifies that he is qualified for the subject examination.

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<sup>2</sup> It is noted that the appellant did not possess one year in the CMT 2 title as of the examination closing date.

<sup>3</sup> Agency records indicate that this provisional employee is currently assigned to a different unit scope and work location to which the subject examination was not opened.

## CONCLUSION

*N.J.A.C.* 4A:4-2.6(a)2 provides that applicants shall meet all requirements specified in the promotional examination announcement by the closing date. However, *N.J.A.C.* 4A:1-1.2(c) states that the Commission may relax a rule for good cause in particular situations, on notice to affected parties, in order to effectuate the purposes of Title 11A, New Jersey Statutes.

In the instant matter, Agency Services correctly determined that the appellant did not possess the one year of experience in a supervisory capacity for the subject examination prior to the February 21, 2020 closing date, as he was only credited for 10 months of supervisory experience from May 2019 to February 2020 in the position formerly known as a CMT 2 (10131). Agency Services also properly did not credit the appellant for supervisory duties he performed in other positions listed on his application and resume since the supervision was over contractors. Regardless, the primary duties of the appellant's prior positions were not in a supervisory capacity in inspecting or testing materials, reviewing permit applications, inspecting construction work, and/or construction maintenance work requiring mathematical calculations to estimate materials or labor in inspecting or testing materials, reviewing permit applications, inspecting construction work, and/or construction maintenance work requiring mathematical calculations to estimate materials or labor. However, the appellant continued to serve as a CMT 3 (10131) after the examination closing date, which gave him more than enough supervisory experience to meet the announced examination requirements. As noted, the title series was renumbered, and the appellant's title changed from CMT 2 to CMT 3 effective February 29, 2020. Moreover, the appellant was appointed provisionally to the CMT 4 title on February 13, 2021, gaining additional applicable experience. Finally, the examination for the subject title has not yet been administered, and absent the acceptance of the appellant's supervisory experience after the February 21, 2020 closing date, the appellant could possibly have to wait an indeterminate number of years before there is another examination announced for the subject title.

In addition, should any candidate not pass the examination there could be a possibility that the appointing authority might not have enough candidates for a complete list. To allow the appellant to be admitted to the subject examination would minimally increase the possible candidate pool to nine and most likely ensure that a complete list exists, where a list of six candidates would be considered a complete list for the four vacancies in the unit scope. *See N.J.A.C.* 4A:4-4.2(c) (An appointing authority shall be entitled to a complete certification for consideration in making a permanent appointment, which means that from promotional and open competitive lists, the names of three interested eligibles for the first permanent appointment, and the name of one additional interested eligible for each additional permanent appointment).

Therefore, under these circumstances, the Commission finds that good cause exists to relax the provisions of *N.J.A.C.* 4A:4-2.6(a)2 and admit the appellant to the subject examination. In this regard, the purpose of the Civil Service system is best served when more rather than fewer individuals are presented with appointments and/or advancement opportunities. *See Communications Workers of America v. New Jersey Department of Personnel*, 154 N.J. 121 (1998).

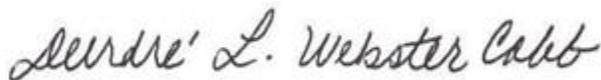
This determination is limited to the instant matter and does not provide precedent in any other matter.

### ORDER

Therefore, it is ordered that this appeal be granted, and the appellant's application be processed, for prospective employment opportunities only.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 2<sup>ND</sup> DAY OF JUNE, 2021



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